



COMMISSION ON HUMAN RIGHTS
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Carmelyn P. Malalis
Commissioner and Chair

December 21, 2015

By Email: cdowney@dhr.ny.gov

Caroline J. Downey, Esq.
General Counsel
New York State Division of Human Rights
One Fordham Plaza, 4th Floor
Bronx, New York 10458

RE: Proposed Rule Section 466.13: Gender Identity Discrimination

Dear Ms. Downey:

I write on behalf of the New York City Commission on Human Rights (the "Commission") to submit comments to the proposed addition of Section 466.13 to Title 9 of the New York Code of Rules and Regulations, which would clarify that discrimination on the basis of gender identity may constitute either sex or disability discrimination under the New York State Human Rights Law. The Commission is the New York City agency charged with enforcing the New York City Human Rights Law ("NYCHRL"), which broadly prohibits discrimination in housing, employment, and public accommodations on the basis of race, religion/creed, color, age, national origin, alienage or citizenship status, gender, sexual orientation, disability, pregnancy, and marital and partnership status, and provides additional protections in employment based on arrest or conviction record, status as a victim of domestic violence, stalking, or sex offenses, unemployment status, and credit history, and additional protections in housing based on lawful occupation, the presence of children, and lawful source of income. The NYCHRL also protects against bias-based profiling by law enforcement and discriminatory harassment. The provisions of the NYCHRL already protect against the type of discrimination addressed by Section 466.13, and the Commission supports amending New York State law to provide for such protection statewide.

Discrimination against transgender and gender non-conforming people in employment, housing, and public accommodations is an insidious and pervasive problem that manifests itself in a variety of ways.¹ Recognizing the profoundly debilitating impact of gender-based discrimination on transgender and other gender non-conforming individuals,² and the need to make the law more accessible to those populations, New York City passed the Transgender Rights Bill in 2002, to clarify that all references to “gender discrimination” in the NYCHRL should be read to include discrimination based on a person’s “actual or perceived sex and shall also include a person’s gender identity, self-image, appearance, behavior or expression, whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to that person at birth.” N.Y.C. Admin. Code § 8-102(23). The City’s intent in amending the law was to make explicit that the law prohibits discrimination against transgender people.³ Three years later, the Commission published *Guidelines Regarding Gender Identity Discrimination*, which sought to define terms associated with gender identity and expression discrimination and identify a range of actions and situations that could constitute violations of the NYCHRL in this area.

It is now ten years later, and though we see more public awareness about how transgender and gender non-conforming people’s lives are affected by discrimination and harassment, we also see the need for greater understanding on the protections and obligations afforded by the law. To address this need, today the Commission has published the *Legal Enforcement Guidance on Discrimination on the Basis of Gender Identity or Expression* (“guidance”). The guidance clarifies the range of different actions and situations that constitute discrimination against transgender people and/or discrimination on the basis of gender identity or expression under the NYCHRL.

¹ M. Somjen Frazer & Erin E. Howe, *Transgender health and economic insecurity: A report from the 2015 LGBT Health and Human Services Needs Assessment Survey* (2015), <http://www.prideagenda.org/lgbtdata> (finding, in a survey of 878 transgender and gender-non conforming New Yorkers, that nearly one-third reported being fired and 42% reported being not hired because of their gender identity); Jaime M. Grant, Lisa A. Mottet & Justin Tanis, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (2011) *available at* http://endtransdiscrimination.org/PDFs/NTDS_Report.pdf (finding 19% of respondents had been refused a home or apartment ; 11% were evicted because of their gender identity/expression; and 53% were verbally harassed or disrespected in a place of public accommodation, including hotels, restaurants, buses, airports and government agencies).

² Report of the Governmental Affairs Division, Committee on General Welfare, Intro. No. 24, to amend the administrative code of the city of New York in relation to gender-based discrimination (April 24, 2002) *accessible through* <http://legistar.council.nyc.gov/Legislation.aspx>.

³ *Id.*

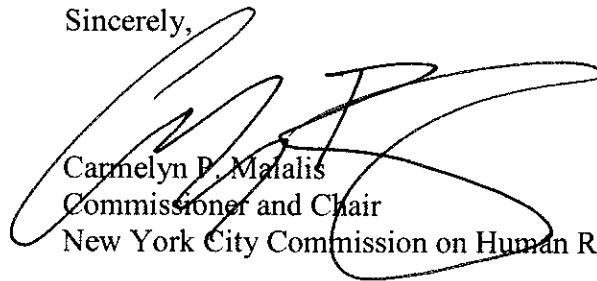
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The Commission regularly refers members of the public to the State Division on Human Rights where the complained-of discriminatory actions took place outside of New York City. It is our hope that the State Division on Human Rights will interpret Section 466.13 to provide as much protection as the NYCHRL does in this area.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'C. Malalis', is written over the typed name and title.

Carmelyn P. Malalis
Commissioner and Chair
New York City Commission on Human Rights